

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-CR-12-BO
No. 5:09-CV-2-BO

ROGER DALE RAY,)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

This matter is before the Court on Petitioner's (1) Motion for Refund of Transcript Expense; (2) Motion for Reconsideration; (3) Motion for Leave to Proceed *in forma pauperis*; (4) Motion to Compel Proffer Information; (5) Motion to Correct Presentence Report; and the Government's Motion to Dismiss Petitioner's Motion to Correct Presentence Report; and Motion to Dismiss Petitioner's Motion to Compel Proffer Information. For the reasons below, Petitioner's Motions are DENIED. Respondent's Motions to Dismiss are GRANTED.

BACKGROUND

On June 4, 2007, Petitioner entered a plea, pursuant to a written plea agreement, and pled guilty to conspiracy to launder money in violation of 18 U.S.C. § 1956(h). Petitioner also agreed to knowingly and expressly waive all rights to appeal, including an appeal pursuant to 28 U.S.C. § 2255. The plea agreement reserved only the right for Petitioner to appeal a sentence in excess of the applicable advisory guideline range or based upon ineffective assistance of counsel or prosecutorial misconduct not known to Petitioner at the time of his guilty plea. Petitioner signed the agreement and confirmed at his arraignment that he understood his rights and was waiving

them in order to enter into the plea agreement. On March 6, 2008, Petitioner was sentenced to a term of 130 months, below the sentencing guideline range. This Court denied Petitioner's § 2255 Motion on February 2, 2010 and denied his Motion for Transcripts on May 17, 2010.

DISCUSSION

(1) Petitioner's Motion for Refund of Transcript Expense; (2) Motion for Reconsideration; and (3) Motion for Leave to Proceed *in forma pauperis*

Petitioner's Motion for Transcripts at no cost was denied by this Court on May 17, 2010. D.E. #150. As noted in that Order, Petitioner has not demonstrated a particularized need for the transcripts, only stating in his Motion for Reconsideration that the Court is permitted to give a Petitioner a transcript at no cost if it is appropriate. The Court acknowledges its power to grant such a motion, but here, Petitioner has not demonstrated a legitimate particularized need, nor is there a jurisdictional basis for the transcripts as a certificate of appealability was also denied in this case. As such, Petitioner's Motion for Reconsideration is DENIED.

Petitioner has filed a Motion for Refund of Transcript Expense for a third party. As Petitioner is not entitled to transcripts in this matter, he is also not entitled to a refund. Thus, Petitioner's Motion for Refund of Transcript Expense is DENIED.

Petitioner has also filed a Motion for Leave to file *in forma pauperis*. Without reaching the merits of this request, 28 U.S.C. § 1915(a)(2) requires:

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

Id. Petitioner has not submitted a certified copy of the trust fund account statement, and

therefore has not met the requirements for his motion to be considered. As such, Petitioner's Motion for Leave to file *in forma pauperis* is DENIED.

(4) Motion to Compel Proffer Information; and Government's Motion to Dismiss

The Petitioner is requesting discovery concerning a § 2255 petition that this Court denied on February 2, 2010. As Petitioner has filed notice of appeal with the Fourth Circuit, jurisdiction as to the matters pertaining to the § 2255 petition have been transferred to the Court of Appeals. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)(filing a notice of appeal confers jurisdiction on the Court of Appeals and divests the district court of its control over those aspects of the case involved in the appeal). As such, Petitioner's Motion is DENIED. The Government's Motion to Dismiss is GRANTED.

(5) Motion to Correct Presentence Report; and Government's Motion to Dismiss


Petitioner also seeks to have his Presentence Report ("PSR") amended. However, the PSR and Statement of Reasons are correct. The Statement of Reasons properly states that the Court found the Government did not meet its burden in establishing obstruction of justice, which included the murder-for-hire allegation. Therefore, because the Statement of Reasons already states what Petitioner requests, there is no need to make any changes. Accordingly, Defendant's Motion is DENIED and the Government's Motion is GRANTED.

CONCLUSION

Accordingly, Petitioner's Motion for Refund of Transcript Expense; Motion for Reconsideration; Motion for Leave to Proceed *in forma pauperis*; Motion to Compel Proffer Information; Motion to Correct Presentence Report are DENIED. The Government's Motion to Dismiss Petitioner's Motion to Correct Presentence Report; and Motion to Dismiss Petitioner's Motion to Compel Proffer Information are GRANTED.

SO ORDERED.

This 15 day of July, 2010.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE